

Amendment No. 1 to SB1781

Crowe
Signature of Sponsor

AMEND Senate Bill No. 1781*

House Bill No. 1848

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 71-5-105, is amended by deleting subdivisions (a)(3)(B), (C), and (D) in their entireties and substituting instead the following:

(B) Establish, in consultation with the comptroller of the treasury and the Tennessee Health Care Association (THCA), rules for an acuity and quality-based reimbursement methodology for nursing facility services paid for by the bureau of TennCare under the rules of the department and as designated and certified by the department. Payment determination components shall include acuity adjusted direct care, non-acuity adjusted direct care, quality, administration, fair market value capital, a cost-based component, and an inflation index factor. The inflation index factor that shall be the most recent Skilled Nursing Facility without Capital Market Basket Index as published by IHS Global Insight (IHS Economics) or other index as may be agreed to by the bureau of TennCare, the comptroller of the treasury, and THCA should this index cease to be produced. The commissioner may establish the maximum amount to be paid to nursing facilities, consistent with the requirements of federal law and § 71-5-124(b);

SECTION 2. Tennessee Code Annotated, Section 71-5-1002, is amended by deleting subsection (h) in its entirety and substituting instead the following:

(h) The fund shall be used exclusively for the following purposes:

(1) To make expenditures for nursing facility services under the TennCare program for FY 2018-2019 at the full rates for the specified fiscal year

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as provided for under bureau of TennCare rules relative to the acuity-and quality-based reimbursement system and in accordance with § 71-5-105(a)(3)(B);

(2) To provide funding for the implementation of an acuity-based reimbursement system that shall include at a minimum a quality performance component for nursing facility services and a nursing rate component. The nursing rate component shall be adjusted by the average medicaid case-mix of the facility utilizing the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Resource Utilization Group-Version 4 (RUG-IV), 48-Grouper model;

(3) To pay nursing home covered services covered for medicaid beneficiaries within medicare upper payment limits, as negotiated with the bureau of TennCare. The upper payment limit of all nursing homes shall be calculated by the bureau of TennCare using the higher of the cost-based or prospective payment system approach in accordance with 42 C.F.R. 447.272; and

(4) Not later than June 30, 2018, a one-time transfer in the amount of fifteen million one hundred seventy-three thousand one hundred twenty-five dollars (\$15,173,125) shall be made from the nursing home trust fund to the bureau of TennCare. The payment equals the amount of TennCare funds that were used in fiscal years 2014-2015 and 2015-2016 to fund nursing home expenditures due to a budgetary restriction on the amount of nursing home fees that could be used.

SECTION 3. Tennessee Code Annotated, Section 71-5-1003, is amended by deleting the date "July 1, 2017" where it appears throughout subsection (c) and substituting instead the date "July 1, 2018"; and is further amended by deleting the date "June 30, 2018" where it appears throughout subsection (c) and substituting instead the date "June 30, 2019"; and is further amended by deleting in subdivision (c)(4) the words "FY 2017-2018" and substituting instead the words "FY 2018-2019".

SECTION 4. Tennessee Code Annotated, Section 71-5-1003, is amended by deleting subdivision (c)(3) and substituting instead the following:

Any licensed nursing home that is licensed on July 1, 2018, and provided forty thousand (40,000) or greater medicaid patient days for the twelve (12) months ending December 31 of the prior year shall pay an assessment rate equal to two and one-half percent (2.50%) of net patient service revenue divided by all non-medicare patient days. The facility shall pay the per diem rate for each of its non-medicare days.

SECTION 5. Tennessee Code Annotated, Section 71-5-1003, is further amended by deleting subsection (f).

SECTION 6. Tennessee Code Annotated, Section 71-5-1004, is amended by deleting the section and substituting instead the following language:

71-5-1004.

(a)

(1) A specified amount of the funding for nursing facility (NF) services shall be set aside during each fiscal year for purposes of calculating a quality-based component of each NF provider's per diem payment as a quality incentive component, which shall be in addition to quality informed aspects of the NF reimbursement methodology.

(2) At the outset of the implementation of these acuity and quality-based reimbursement system, the amount of funding set aside for the quality-based

component of the reimbursement methodology for nursing facilities shall be no less than forty million dollars (\$40,000,000) or four percent (4%) of the total projected fiscal year expenditures for NF services, whichever is greater.

(3) In each subsequent year, the amount of funding set aside for the quality-based component of the reimbursement methodology for nursing facilities shall increase at two (2) times the rate of inflation of the index factor. Index factor inflation shall be calculated from the midpoint of the prior state fiscal year to the midpoint of the new state fiscal year.

(4) This annual quality-based component index factor adjustment shall continue until such time that the quality-based component of the reimbursement methodology for nursing facilities constitutes ten percent (10%) of the total projected fiscal year expenditures for NF services. Once the quality-based component of the reimbursement methodology constitutes ten percent (10%) of the total projected fiscal year expenditures for NF services, it shall then increase or decrease at a rate necessary to ensure that the quality-based component of the reimbursement methodology remains at ten percent (10%).

(5) All noted minimum quality-based component thresholds and index factor inflationary adjustments are made prior to consideration of the budget adjustment factor (BAF).

(b)

(1) The base-year annualized medicaid resident day-weighted median costs and prices shall be rebased at an interval no longer than three (3) years after a new base year period has been established. The new base year median costs and prices will be established using the most recently audited or desk reviewed cost reports that have a cost reporting period greater than six (6)

months, with a cost report end date eighteen (18) months or more before the start of the rebase period.

(2) Cost reports issued a disclaimer of opinion during the audit process or cost reports containing substantial issues, including incomplete filing, during the desk review process, as solely determined by the comptroller of the treasury, will be excluded from the median and price calculations.

(3) Only audited or reviewed cost reports available prior to the July 1 rate setting will be considered in the median and price calculations.

(c)

(1) The initial quality outcome measures and point values established for the NF reimbursement system implemented on July 1, 2018, shall be based upon the structure of the QUILTSS criteria established by the bureau of TennCare on August 5, 2014. The bureau of TennCare may establish quality outcome measures and performance benchmarks by rulemaking consistent with the provisions of this section.

(2) Quality outcome measures and performance benchmarks for each measure shall not be modified for the first three (3) fiscal years of reimbursement unless agreed to by TennCare and the Tennessee Health Care Association (THCA). After the initial three (3) year period, quality outcome measures, performance benchmarks for each measure, and point values shall be established in consultation with THCA. Any modifications to such criteria shall be established through rulemaking and shall not be changed for another three (3) year period.

(d) Any submissions by any facility relating to documentation of and participation in the quality-based component of the reimbursement methodology for nursing facilities shall be confidential and privileged and shall be protected from direct or indirect means

of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. However, nothing in this rule shall be construed to make immune from discovery or use in any judicial or administrative proceeding information, record, or documents that are otherwise available from original sources kept in the facility, and would otherwise be available to a litigant through discovery requested from the facility. The confidentiality provisions of this subsection (d) shall also not apply to any judicial or administrative proceeding contesting the determination of the bureau of TennCare regarding the facility's quality component reimbursement.

SECTION 7. Tennessee Code Annotated, Section 71-5-1005(b), is amended by deleting the second sentence of the subsection and substituting instead the following language:

However, § 71-5-1413 shall be the exclusive authority for rulemaking by the bureau of TennCare regarding the initial rules regarding the acuity-based nursing home reimbursement system and any subsequent modifications to the nursing home reimbursement system.

SECTION 8. Tennessee Code Annotated, Section 71-5-1006, is amended by deleting in subsection (c)(1) the date "July 1, 2017" and substituting instead "July 1, 2018".

SECTION 9. Tennessee Code Annotated, Section 71-5-1010, is amended by deleting in subsection (a) the date "June 30, 2017" and substituting instead "June 30, 2019".

SECTION 10. Tennessee Code Annotated, Section 71-5-1413, is amended by deleting subsection (c) in its entirety.

SECTION 11. This act shall take effect July 1, 2018, the public welfare requiring it.